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In re Application of
Dennis P. Long et al
Application No. 10/053,968
Filed: January 22, 2002
Attorney Docket No. 7377-000048

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 4, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed January 6, 2004, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). The amendment submitted on April 6, 2004, did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed January 11, 2005. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. Extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on April 7, 2004.

The above-identified application is being revived solely for purposes of continuity with a submission under 37 CFR 1.114 (request for continued examination (RCE)).

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$120 extension of time submitted on January 25, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's Deposit Account No. 08-0750.

The filing of a terminal disclaimer is unnecessary as a condition for revival pursuant to the provisions of 37 CFR 1.137(b) under the current rules. Therefore, the terminal disclaimer filed with the petition will not be processed and the fee of \$130 is also being credited to the above-noted Deposit Account No.

After this decision is mailed, petitioner's Deposit Account No. 08-0750 will be credited in the amount of \$250.00.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center 3742 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Amendment.



Wan Laymon

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy